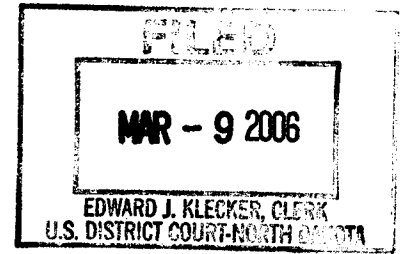


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHEASTERN DIVISION



Mark Foster,

Plaintiff,

vs.

Laura McCleary and George Beltz,  
in their official and individual capacities,

Defendants.

Case No. 03:05-cv-37

**ORDER AND REPORT AND RECOMMENDATION**


Plaintiff Mark Foster moved to amend his complaint to remove defendant Laura McCleary as a defendant and add an additional ten defendants (Doc. #39). Foster asserts he learned through discovery defendant McCleary was not present during his alleged assault, but the additional named individuals participated in the incident. Foster filed his motion on November 9, 2005. At that time, attorney Sara Sorenson represented him. This court recently granted attorney Sorenson's motion to withdraw as counsel. (Doc. #45). The court's order also noted defendants had not responded to Foster's motion to amend. However, the court recognized defendants may have not responded because Foster had legal counsel at the time he filed his motion. The court granted defendants ten days to respond to the motion to amend. The defendants have now responded and Foster submitted his reply (Doc. #47, #48).

Defendants assert the court should deny Foster's motion because the motion is untimely. The scheduling order in this case provides that parties must file motions to amend the pleadings by December 2, 2005. Contrary to defendants' argument, Foster filed a timely motion. Foster correctly states in his reply brief that defendants offer no other grounds for denying his motion,

other than the timeliness issue. The court finds no obvious substantive grounds to deny the motion. Therefore, the court **ORDERS** the ten individuals listed in Foster's motion added as defendants. Further the court **RECOMMENDS** defendant Laura McCleary be removed as a defendant.

Pursuant to Local Rule 72.1(E), any party may object to this recommendation and/or appeal from this order within ten (10) days after being served with a copy.

Dated this 8th day of March, 2006.

  
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Karen K. Klein  
U.S. Magistrate Judge